

1982 June 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS CHRISTODOULOU AND OTHERS,

*Applicants,*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE GRANTS COMMITTEE,

2. THE MINISTER OF FINANCE,

*Respondents.*

(Case No. 195/76).

*Administrative Law—Inquiry—Due inquiry—Misconception of fact  
—Application for dependants' allowance in respect of death whilst  
in active service in the National Guard—Sub judice decision relating  
to circumstances of death, based on several conflicting reports  
5 —Respondent Committee ought to have carried out a further  
inquiry in order to ascertain exact circumstances of death—  
Sub judice decision annulled on ground of lack of due inquiry—  
Presumption that administrative decision reached after correct  
ascertainment of the relevant facts rebutted if it is established  
10 that there exists at least a probability that respondent acted  
under a misconception of fact—Reasonable probability that  
sub judice decision reached as a result of a factual misconception  
—Annulled for this reason too.*

15 The applicants, who were the parents and brothers and sisters  
of the deceased Nicolas Christodoulou ("the deceased") who was  
killed on the 15th July, 1974 whilst serving in the National Guard  
applied to the respondent Grants Committee for a dependants'  
allowance.

20 The respondent Committee dismissed the application because  
it formed the view that the deceased was not killed while being  
on lawful active service in the National Guard but due to his  
participation in the abortive coup d'etat of 15th July 1974.  
Hence this recourse.

The said Committee in arriving at its sub judge decision took into account, regarding the circumstances in which the deceased was killed, reports of the Police, of the National Guard and of the Central Information Service (KYP), which on many material points were conflicting, and it was impossible on the basis of them only to conclude with certainty that the deceased was killed while participating in the coup d' etat 2

*Held*, that on the basis of the material before the Court this was a case in which the respondent Committee ought to have carried out a further inquiry in order to ascertain the exact circumstances in which the deceased was killed and as it has failed to do so its sub judge decision has to be annulled, in any event, on the ground of lack of due inquiry 10

*Held*, further, that the presumption that an administrative decision was reached after a correct ascertainment of the relevant facts can be rebutted if it is established that there exists at least a probability that the authority concerned has acted under a misconception of fact, that the applicants have succeeded in establishing that there exists, to say the least a quite reasonable probability that the sub judge decision has been reached as a result of a factual misconception and, therefore, the sub judge decision has to be annulled for this reason too 20

*Sub judge decision annulled*

Cases referred to

- Aristidou and Others v Republic* (1983) 3 C L R 1332, 25  
*Mallouos v Electricity Authority of Cyprus* (1974) 3 C L R 220 at p 224,  
*Andriou v Cyprus Broadcasting Corporation* (1976) 3 C L R 36 at p 42

**Recourse.** 30

Recourse against the decision of the respondents to dismiss applicants' application for the grant to them of a dependants' allowance in respect of the death of Nicolas Christodoulou

*A Papadopoulos*, for the applicants.

*G I Michaelides*, for the respondents 35

*Cui ad vult*

TRIANAFYLLIDES P. read the following judgment By means of the present recourse the applicants challenge, in effect, the

decision of the respondent Grants Committee by means of which it was decided to dismiss their application for the grant to them of a dependants' allowance in respect of the death of Nicolas Christodoulou, their son (applicants 1 and 2 are his father and mother, respectively) and brother (applicants 3, 4, 5, 8, 9 and 11 are his sisters and applicants 6, 7 and 10 are his brothers).

The deceased enlisted in the National Guard on the 22nd January 1973 and he was serving in it on the 15th July 1974 when he was killed.

The application of the applicants for a dependants' allowance was made under section 19 of the National Guard Law, 1964. (Law 20/64), as amended by the National Guard (Amendment) Law, 1975 (Law 24/75), and under the National Guard (Dependants of Persons Killed or Incapacitated) (Allowances) Regulations.

The respondent Committee dismissed the applicants' application because it formed the view that the deceased was not killed while being on lawful active service in the National Guard but due to his participation in the abortive coup d'etat of 15th July 1974.

As it appears from the Opposition the said Committee in arriving at its sub judice decision took into account, regarding the circumstances in which the deceased was killed, reports of the Police, of the National Guard and of the Central Information Service (KYP).

It appears, from the contents of the aforesaid reports, that the deceased was shot and killed while he was in the vicinity of the Headquarters of the Military Command in Limassol. On, however, many material points such reports are conflicting and it is impossible on the basis of them only to conclude with certainty that the deceased was killed while participating in the coup d'etat, as found by the respondent Grants Committee.

On the basis of the totality of the material before me I have come to the conclusion that this was a case in which the respondent Committee ought to have carried out a further inquiry in order to ascertain the exact circumstances in which the deceased was killed and as it has failed to do so its sub judice decision has to be annulled, in any event, on the ground of lack of due inquiry.

As has been pointed out in the judgment just delivered today in the case of *Aristidou and others v. The Republic*, (1983) 3 C.L.R. 1332—which is to a certain extent similar to the present case—the presumption that an administrative decision was reached after a correct ascertainment of the relevant facts can be rebutted if it is established that there exists at least a probability that the authority concerned has acted under a misconception of fact (see, in this respect, inter alia, *Mallouros v. The Electricity Authority of Cyprus*, (1974) 3 C.L.R. 220, 224 and *Andreou v. Cyprus Broadcasting Corporation*, (1976) 3 C.L.R. 36, 42). 5 10

In the present case I am of the view that the applicants have succeeded in establishing that there exists, to say the least, a quite reasonable probability that the sub judge decision has been reached as a result of a factual misconception and, therefore, the sub judge decision has to be annulled for this reason too. 15

In the result this recourse succeeds; but I will make no order as to its costs.

*Sub judge decision annulled.* 20  
*No order as to costs.*